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IN THE

Supreme Court of the United States

No. 70.

October Term, 1947.

GILES KAVANAGH, Collector of Internal Revenue,
Petitioner,

v.

J. H. NOBLE,
Respondent.

RESPONDENT'S PETITION FOR REHEARING.

E. M. BAYNES,
W. H. HARRIS,
JULIUS L. BERNS,
Attorneys for Respondent-Petitioner.

International, 236 Chestnut St., Phila. 6, Pa.

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GILES KAVANAGH, COLLECTOR OF INTERNAL REVENUE,
Petitioner,

v.

J. H. NOBLE,
Respondent.

RESPONDENT'S PETITION FOR REHEARING.

Now comes J. H. Noble, respondent, and petitions the Court for a rehearing of the above entitled case decided against him by this Court on December 22, 1947, time for filing this petition, for good cause shown and by proper order, having been extended to March 1, 1948, and on the following grounds:

I.

The opinion in this case indicates the adoption by the Court of the theory of the Attorney General that this case should follow the decision in the *Liberty Glass Company* case, No. 71, October Term, 1947, and that the suit in this case was of like nature with that in the *Liberty Glass Company* case, overlooking the fact that the two cases are totally unlike, with no point of similarity.

The strategy of the Attorney General's office has been clear. In point of time the instant case antedated the *Liberty Glass Company* case and involved about twenty times as much money.

Yet the petition for certiorari was filed in the *Liberty Glass Company* case, a weak case where reversal was to be

expected, reasons and argument adduced for the grant of the petition in that case, and then in the instant *Noble* case there was no real petition for certiorari, no reasons given for its grant, but merely a reference to the *Liberty Glass Company* case, as if that should be controlling, and as if reference to another case complied with the rules of this Court.

Again, the *Noble* case came first on the docket, being No. 70, while the *Liberty Glass Company* case was No. 71. They so appeared at first on the daily calendar in the Bar Meeting Room. Suddenly the position of these two cases on the calendar was reversed, at whose instance or by what order is unknown to the respondent's counsel, but this shift enabled the Attorney General to make the main argument in the *Liberty Glass Company* case first, apparently the object of the shift of the cases and consistent with the theory of the Attorney General that the instant case should follow the *Liberty Glass Company* case in all respects.

In the opinion in the *Liberty Glass Company* case, the Court discussed the arguments adduced by the plaintiff in that case, and merely referred to those arguments in the opinion in the instant case, evidently considering that the two cases are alike, as contended by the Attorney General.

II.

The facts in the two cases are totally unlike. In the *Liberty Glass Company* case there was merely an unintentional mistake in computing the tax, resulting in the taxpayer having paid more income tax than was owing, exactly the kind of case covered by the language of the Code Section 322.

In the instant case, there was no error in computing any income tax. No income tax is involved. This is not an income tax case. No income tax liability in any amount existed. Mr. and Mrs. Noble, constituting a taxable unit as provided by the laws of Congress, had paid the tax shown thereon (R. 16 (4)). In that return they reported together

their losses and gains from sales of capital assets which this Court, in *Helvering v. Janney et al.*, 311 U. S. 189, held was proper.

Upon the audit of this joint return, there was determined a deficiency of $421.80 which was paid on June 7, 1937 (R. 17 (6)). Thereupon, every taxwise duty owed by that taxable unit had been discharged.

These sales of capital assets by husband and wife showed considerable loss. Notwithstanding the loss to this taxable unit, the defendant in the original suit, Kavanagh, exacted from the plaintiff the sum of $21,105.90 (R. 35 (2)). This could not have been any income tax as was the case in the *Liberty Glass Company* case. Here this taxable unit was as free from any tax liability as a newborn babe. It might as well have been picked out of the sky. There was no income on which it could be imposed. The sum was extracted as a result of a loss sustained by the taxable unit, and the Congress has not yet imposed taxes on losses, and if the Congress did not impose the tax Code Section 322 by its terms is inapplicable.

Whether Kavanagh was acting under an order of the Commissioner is inmaterial. The order of a superior officer does not justify the doing of an illegal act, whether of cruelty or murder in a concentration camp, or in taking money from an humble citizen which he does not owe.

III.

The suits in the two cases are totally unlike. The instant suit was not an action on a refund claim. In this Court's opinion (page 3) it is stated: "The taxpayer then brought this suit against the Collector to recover the amount alleged to be due in the refund claim".

The suit was not brought against the Collector, but against Kavanagh as an individual. The word "Collector" was put in by the Attorney General.

In this respect there are attached as Exhibits "A" and "B", certified copies of the complaint and the judgment

in the original suit, believing that this Court will not insist upon a strict adherence to formality and to rules to the detriment of doing justice. The original certified copies of these papers will be attached to the printed original petition for rehearing to be filed herein.

The attention of the Court is called to the caption of the case showing the individual as defendant; also it was captioned "Action for Money Had and Received"; also the jurisdiction (Paragraph 3 of complaint) was based on diverse citizenship, the limitation period was stated (Par. 5) as six years from accrual of right of action, as provided by Michigan statute, no mention was made of any claim for refund and the judgment (Ex. "B") of the District Court was against Kavanagh individually and without any reference to the defendant being Collector or holding any office.

There has really been no appeal from this judgment. When the appeal was entered it was entered in behalf of Kavanagh as Collector, against whom as such no judgment had been rendered, the Attorney General seeming to have preferred that course.

IV.

It is true that respondent's counsel, rather naively perhaps, acceded to the suggestion of petitioner's counsel that a third amendment to the complaint be prepared and filed, but at no point was any portion of the original complaint abandoned or changed. This third amendment to the complaint was in line with the decision of the Circuit Court of Appeals of the Sixth Circuit in *U. S. v. Lederer Terminal Warehouse Company*, 139 F. (2d) 679, and this case was to be tried in a district court in that circuit.

The astute suggestion of this third amendment to the complaint and its incorporation in the record in the appeal by the petitioner did not raise any doubts in the minds of respondent's counsel for the reason that it was not believed possible that any other court than the Circuit Court of Appeals of the Sixth Circuit would pass on this question. It

had been the consistent policy of this Court not to grant petitions for certiorari unless there were diverse decisions of lower courts of appeal or unless some question of general importance was presented.

V.

It is most respectfully submitted that this Court has a misconception of the instant case. For example, in the opinion in the *Liberty Glass Company* case (page 7) (referred to because the Court considered that opinion applicable here), the case of *Rosenman v. U. S.*, 323 U. S. 658, 661, is cited and yet in that case there was no question presented as to which statute of limitations would apply, but only the question as to whether a deposit on account of taxes was a "Payment" that would start the limitation to run.

In the opinion in the *Liberty Glass Company* case, there was no explanation as to the difference in the language of the Congress in Code Section 3312, where all income taxes were excluded, and in Section 3313, where the exclusions were "except as modified by Section 252" (1921 Act), "except as provided in Section 281" (1924 Act), "except as provided in Section 284" (1926 Act), "except as otherwise provided by law in the case of income, etc., taxes" (1928 and subsequent Acts and Code Sec. 3313).

The Court apparently overlooked the legislative history of the exceptive clause in R. S. 3228 indicated above which shows that every time the Congress mentioned this exceptive clause it did so in limiting language and apparently went out of its way not to make a general exception of income taxes as was done in Code Section 3312. The difference of language in Code Sections 3312 and 3313 (R. S. 3228) is striking. It must mean something.

This was one of respondent's main arguments, obviously overlooked, for it is not mentioned in the opinion in either case.

The Court apparently overlooked that the courts and also the Bureau have long drawn the distinction between

legally imposed taxes and illegal collections as for taxes but where the taxes had not been imposed by law, as witness Mimeograph 3958 (C. B. X-1-2, 23) and Mimeograph 4564 (C. B. 1937-1, 93), another of respondent's unnoticed arguments.

In the opinion in the *Liberty Glass Company* case there is a discussion of the meaning of the word "Overpayment". Certainly that discussion could have no relation to the instant case, respondent having stated in his brief (p. 10), "The use of the word 'overpayment' in these sections providing for limitations on refunds of lawfully imposed taxes seems to be of no special significance. The material words are '*tax imposed by this chapter.*'". (Emphasis supplied.)

The word "overpayment" seems no different from "excess payment" or "payment of too much"—none of which can relate to a collection made from one who was due to pay no tax nor make any return.

No point made on behalf of the respondent in brief or argument seems to have been considered, but all of them ignored under the mistaken theory that the *Liberty Glass Company* case would control this case.

It is most respectfully submitted that the humblest citizen taxpayer is as much entitled to have his rights considered and determined as is the powerful office of the Attorney General.

The language of Code Section 322 cannot be stretched so as to cover a collection of anything else except a tax *imposed by law. The statute says so.* The language would seem to admit of no misinterpretation.

Suppose the respondent had called the exaction a transfer tax, a gift tax, or an estate tax. Calling it such could have no effect and so calling it an income tax could not make it come within any of the provisions of law applicable to income taxes. It was neither gift tax nor income tax, but as much the one as the other.

Respondent's position is that in fact no statute of limitations applies to this exacting of money by one with-

out authority to make the exaction but only the limitation provided by the laws of Michigan, or in any event that as this could not possibly have been an income tax, nor any tax of any kind, then Code Section 3313 covering illegal collections would be applicable.

VI.

The Court apparently has overlooked that Code Section 3313 (R. S. 3228) related to other collections than taxes and for that reason applies here. It provides for "any sum alleged to have been . . . in any manner wrongfully collected." It would be difficult to frame language better describing this wrongful collection not of a tax but of a "sum" exacted without authority of any law imposing taxes.

VII.

A most disturbing point in this decision is that the Court seems to follow the administrative interpretation of Sections 322 and 3313 in preference to the interpretation placed upon the two statutes by the courts below during the period of the last eight years, though courts are in better position to make impartial interpretations. It seems not far wrong to say that the interpretations of laws pertaining to the collection of internal revenue made by the Treasury Department are largely based on the earnest desire of the Treasury Department to collect taxes and to keep them. It is recognized that it is the duty of the Treasury Department to collect taxes, first, last and always and its interpretations are usually in favor of the Government rather than the taxpayer. For example, the Treasury Department for many years insisted, issuing a special Regulation to that effect, that on a joint return of husband and wife, the sales of capital assets should be reported separately. This Court refused to follow that administrative interpretation in *Helvering v. Janney, et al.*, 311 U. S. 189, and yet in the instant case which arose from the invalidated

Treasury decision in that case, it is proposed to follow the administrative interpretation of Section 322 and make it not merely applicable to actual taxes "imposed by this chapter", as the statute plainly says, but to make it applicable to any collection which the Commissioner *calls* an income tax.

If a citizen received a gift of $10,000.00, receiving nothing else during the year, and the Commissioner imposed a tax on that amount and *called* it an income tax, then under the interpretation of the Treasury Department, which this Court now proposes to follow, that collection would not be an erroneous and illegal collection covered by Code Section 3313 but would come within the coverage of Code Section 322, though directly in the teeth of the language of the statute, "imposed by this chapter."

In the matter of curbing administrative interpretations, one of the objectives of the Administrative Procedure Act, there is a timely article by Honorable John W. Gwynne of the House Committee on the Judiciary, in the January issue of the American Bar Journal.

It is respectfully submitted that when the Court follows the recognized rule that taxing statutes, especially statutes of limitation, are to be strictly construed and the language of the statute not enlarged by Treasury interpretations, then it must be held that an illegal collection, not of an income tax based upon any known income tax law but based on an invalidated interpretation by the Commissioner and the Secretary of Treasury and enforced by an illegal act of an inferior officer, would be an *illegal collection* and therefore come within the purview of Section 3313.

It was an administrative interpretation made by the Treasury Department and invalidated by this Court that caused this loss to this taxpayer. His money was taken from him illegally and the return of it has been refused although the Congress gave him four years within which to file his claim for money illegally collected but not imposed by any taxing statute.

The arguments of the Court cited here are those in the *Liberty Glass Company* case because that is the case this Court has followed in deciding the instant case, though the two diametrically opposed cases were so different in their facts as to give the Court an opportunity to draw the distinction between illegal collections not warranted by any law on the one hand and excess collections of taxes imposed by law on the other.

VIII.

It is respectfully suggested to the Court that there are several ways in which this petition may be passed upon, which dispositions are requested in the alternative, to wit:

1. The petition could be granted and a rehearing had on the record as it stands, and this case *heard on its merits,* to which it is believed the respondent is entitled, and not as an appendage to another case.

2. The Court could order the entire pleadings in the original suit in the District Court sent up so that full consideration may be given to this case, and that is requested unless the writ is dismissed.

3. The Court could dismiss the writ of certiorari for the reason that the petition does not show, as required by Rule 38, Paragraph 2, "the reasons relied on for the allowance of the writ."

The last named disposition is consistent with many holdings of this Court that if upon full consideration of the case it appears that the writ was improvidently granted it would be dismissed. *Layne and Bowler Corp. v. Western Well Works,* 261 U. S. 387, 393; *Furness, Withy & Co. v. Yang-Tsze Insurance Association,* 242 U. S. 430; *U. S. v. Rimer,* 220 U. S. 547.

Not only is it believed the writ should be dismissed because the petition for the same is really no petition in this case, but also the question as made by the facts in this case is not of general importance. Prior to these two

cases there have been, throughout more than thirty years of income tax litigation, only four cases presenting the question as to whether Section 322 or 3313 would apply. That disposition would work no injustice to anyone. Money wrongfully taken from one would merely be returned to its owner, if Kavanagh is able to make restitution.

Respectfully submitted,

E. M. Baynes,
West Palm Beach, Florida,
W. H. Harris,
Fort Valley, Georgia,
Julius L. Berns,
Detroit, Michigan,
Attorneys for Respondent-Petitioner Here.

Certificate of Counsel.

I hereby certify that I am of counsel for the respondent in the above stated case presenting this petition for rehearing, and the same in my opinion is well grounded in law and in fact, and is presented in good faith and not for delay.

W. H. Harris.

At West Palm Beach, Florida
This February 23, 1948.

EXHIBIT "A."

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 3855

Action for Money Had and Received

J. H. NOBLE,
Plaintiff,

v.

GILES KAVANAGH,
Defendant.

Now comes J. H. Noble, plaintiff herein, and sues Giles Kavanagh, defendant, upon the following cause of action, towit:

1.

Plaintiff is a citizen of the United States residing in the County of Palm Beach, State of Florida.

2.

Defendant is a citizen of the United States, a resident of Wayne County, Michigan, and is within the jurisdiction of the District Court of the United States for the Southern Division of the Eastern District of Michigan.

3.

This suit is within the jurisdiction of said court by reason of the diverse citizenship of the parties.

4.

The amount in controversy is in excess of $3,000.00, being for the principal sum of $21,527.70.

5.

Plaintiff's cause of action accrued July 14, 1937, and this action is brought within the limitation period provided by the Michigan statute, towit, within six years after the right of action accrued.

6.

On July 14, 1937, and at all times hereinafter complained of, defendant was a collector of internal revenue for the United States of America for the district of Michigan.

7.

Plaintiff duly and timely made and filed with said collector of internal revenue his federal income tax return for the year 1935, the same being a joint return of himself and wife, and the tax was duly paid.

8.

In said joint return the losses from sales of stocks incurred by his wife exceeded plaintiff's gains from the same source by more than $2,000.00, and said amount of $2,000.00 was consequently deducted as loss.

9.

On June 7, 1937, in conference with the office of the Internal Revenue Agent in Charge in Detroit, Michigan, the return was accepted with some minor adjustments resulting in a tax deficiency of $421.80, which plaintiff paid by giving his check for that amount and interest at the time, and an agreement that such was the tax liability was signed at that conference.

10.

Thereupon, plaintiff had discharged his full tax duty as to 1935, having made proper return and having paid in full his tax liability as agreed upon at the conference, which was correct, and was under no obligation to make any further or other return for 1935, or to pay any income tax for that year.

11.

Thereafter, on July 14, 1937, while plaintiff was under no obligation to make any return or pay any tax for 1935, and while no officer or agent of the United States had any authority of law over plaintiff as to his 1935 tax liability, which had been fully discharged, the said Giles Kavanagh, defendant herein, insisted that plaintiff in his said joint income tax return had no right to offset any of plaintiff's wife's losses from sales of securities against plaintiff's gains from the same source, and alleging that as his reason insisted, and under threat of distraint upon plaintiff's property demanded, that plaintiff pay over to him the said defendant, the sum of $21,527.70, contrary to the laws of Michigan and of the United States.

12.

Whereupon, the said defendant, individually, but under the guise of his office as collector of internal revenue, though having no such authority, and no duty to perform as Collector so far as plaintiff was concerned, and under threat of distraint, illegally and wrongfully and without authority of law, forced this plaintiff to pay to him, the said Giles Kavanagh, the said sum of $21,527.70, though plaintiff did not owe the same, but which amount plaintiff under protest, and rather than have his property subjected to the threatened distraint by one acting illegally under the pretended authority of an officer of the United States, paid to the said Giles Kavanagh on July 14, 1937, in Wayne County, Michigan.

13.

The said sum of money, though thus under compulsion paid over to the said defendant, was by him wrongfully and illegally obtained, had and received, and the same remained and remains the money of this plaintiff, and the said defendant continues to hold the same without any authority therefor, and contrary to plaintiff's rights.

14.

The amount so exacted and forcibly obtained by defendant from plaintiff was not a tax, nor was it an overpayment of any tax, there being at that time no liability of plaintiff to make any return or pay any tax, and no assessment having been made against plaintiff for any tax subsequent to plaintiff's payment on June 7, 1937, of his tax in full.

15.

Plaintiff has demanded of the defendant the return of the said sum of $21,527.70, but the defendant fails and refuses to return to or pay over to plaintiff said monies or any part thereof.

WHEREFORE, plaintiff prays personal judgment against the defendant for the said principal sum of $21,527.70, together with interest thereon at the rate of five (5%) per cent per annum from July 14, 1937, until paid, together with costs of this proceeding.

EUGENE M. BAYNES
W. H. HARRIS
Counsel for Plaintiff

Verification.

STATE OF GEORGIA
COUNTY OF PEACH

Personally appeared W. H. Harris, who being duly sworn herein on oath says that he is one of the attorneys for the plaintiff named in the foregoing declaration, and authorized to make this affidavit, and that the statements therein contained, so far as based on his own knowledge are true, and so far as based on records and information received from others, he believes them to be true.

W. H. HARRIS

Sworn to and subscribed before me this July 8, 1943.

Delma M. Hutto
Notary Public, Georgia
State at Large

(Seal)

U. S. District Court
Eastern District of Mich. } ss.

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

George M. Read, Clerk
By ANNA K. HAAG
Deputy Clerk

Dated:
December 29, 1947

EXHIBIT "B."

UNITED STATES OF AMERICA

IN THE DISTRICT COURT OF THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

No. 3855

SUMMARY JUDGMENT FOR PLAINTIFF

J. H. NOBLE,
Plaintiff,
v.
GILES KAVANAGH,
Defendant.

At a session of said court held in the Federal Building, Detroit, Michigan, this 14th day of May, A. D. 1946.

Present HON. ARTHUR F. LEDERLE, District Judge.

In accordance with findings of fact and conclusions of law filed simultaneously herewith,

IT IS HEREBY ORDERED that plaintiff's motion for summary judgment, as amended, be, and the same is hereby granted, and that the plaintiff, J. H. Noble, recover of the defendant, Giles Kavanagh, the sum of $32,266.29.

IT IS FURTHER ORDERED that defendant's motion for summary judgment of dismissal, as amended, be, and the same is hereby overruled.

ARTHUR F. LEDERLE
District Judge

U. S. District Court
Eastern District of Mich. } ss.

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

George M. Read, Clerk
By Anna K. Haag
Deputy Clerk

Dated
Dec. 29, 1947

SUPREME COURT OF THE UNITED STATES

No. 70.—October Term, 1947.

Giles Kavanagh, Collector of Internal Revenue, Petitioner, *v.* J. H. Noble.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[December 22, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

This case is a companion to *Jones* v. *Liberty Glass Co.*, *ante*, p. —.

The stipulated facts show that on March 1, 1936, the respondent taxpayer filed with the Collector of Internal Revenue a joint individual income tax return for himself and his wife for the calendar year 1935. This disclosed a tax liability of $8,017.01, which was duly paid. In the return the losses and gains from sales of capital assets by the taxpayer and his wife were reported together, the losses of the wife being deducted from the gains of the husband, resulting in a net loss in excess of $2,000. This amount (the allowable limit of loss) was deducted on the return.

On June 7, 1937, the taxpayer was advised at a conference with revenue agents that there was additional income tax due for the year 1935, aggregating $421.80. The taxpayer's check, which was tendered for that amount, was later returned to him. Then by a letter dated June 11, 1937, a revenue agent notified the taxpayer that instead of a deficiency of $421.80 on the 1935 income tax return there was a deficiency of $19,973.93 and the taxpayer was furnished a computation showing the basis for such determination. The agent relied upon

Article 117–5, Regulations 86, later declared void by this Court in *Helvering* v. *Janney*, 311 U. S. 189. After protest and further conference, the taxpayer gave the agent a check for $21,527.70, covering the then proposed deficiency assessment of $19,973.93, plus interest of $1,553.77. This check was remitted to the United States Treasury, after having been received by the Collector on July 21, 1937.

On July 14, 1937, the taxpayer and his wife executed an agreement waiving certain statutory restrictions in their favor and consenting to the immediate assessment and collection against them of 1935 income tax in the principal sum of $19,973.93, plus deficiency interest of $1,553.77, which the Commissioner thereafter assessed. The agreement specified in a footnote that it was not a final closing agreement under § 606 of the Revenue Act of 1928 and that it did not therefore preclude the assertion of a further deficiency if one should be determined, nor did it extend the statutory period of limitation for refund, assessment or collection of the tax.

On January 28, 1941, the taxpayer and his wife filed a claim for refund of $21,105.90, plus interest, on the ground that there had been an illegal assessment and collection since the revenue agents had "refused to allow the losses of one spouse against the gains of the other spouse in the joint return of husband and wife." Reference was made to § 3313 of the Internal Revenue Code, specifying a four-year period of limitations. The Commissioner of Internal Revenue rejected this claim in reliance upon § 322 (b) (1) of the Revenue Act of 1934 (the same as § 322 (b) (1) of the Code), establishing a two-year period of limitations; it was pointed out that § 3313 specifically excludes income taxes from those for which a claim may be filed within four years after payment.

On July 12, 1941, the taxpayer filed his individual claim for refund of $21,527.70 paid with respect to the

year 1935. The claim was on the same grounds as the claim previously filed by the taxpayer and his wife. This claim was returned with the request that the wife join in the execution of the claim; this request was refused and the claim was returned to the Collector; once again the claim was returned to the taxpayer.

The taxpayer then brought this suit against the Collector to recover the amount alleged to be due in the refund claim. The District Court held that the decision of the Sixth Circuit Court of Appeals in *United States* v. *Lederer Terminal W. Co.*, 139 F. 2d 679, controlled the case and made it clear that the four-year period of § 3313 was applicable. Summary judgment was therefore entered for the taxpayer. 66 F. Supp. 258. The Sixth Circuit Court of Appeals affirmed *per curiam*, 160 F. 2d 104, citing its previous decision in the *Lederer Terminal* case.

For reasons which we have set forth in *Jones* v. *Liberty Glass Co.*, *ante*, p. —, the decision below cannot stand. The two-year period provided by § 322 (b) (1), rather than the four-year period of § 3313, governs income tax refund claims. The overpayment which brings § 322 (b) (1) into operation occurs whenever the taxpayer has paid an amount over and above his true liability. Hence, if we assume that the deficiency assessment and collection in this case were without legal authority, the taxpayer's payment of that illegal assessment was an overpayment within the meaning of § 322 (b) (1). And he had two years from the date of that payment within which to file a claim for refund. Since he did not file his claim until three and a half years after payment, the claim was out of time.

It may well be that the taxpayer's refund claim was prompted by this Court's decision in *Helvering* v. *Janney*, *supra*, which set aside the Treasury regulation upon which the deficiency assessment was based. That decision was

rendered on December 9, 1940, and the taxpayer filed his first refund claim on January 28, 1941. But assuming that the *Janney* decision makes clear that the taxpayer here made an overpayment, the loss which he now suffers from an application of § 322 (b) (1) is a loss which is inherent in the application of any period of limitations. Such periods are established to cut off rights, justifiable or not, that might otherwise be asserted and they must be strictly adhered to by the judiciary. *Rosenman* v. *United States*, 323 U. S. 658, 661. Remedies for resulting inequities are to be provided by Congress, not the courts.

Moreover, it is not our province to speculate as to why Congress established a shorter period of limitations relative to the income tax than is the case of those taxes governed by § 3313. It is enough that § 322 (b) (1) creates a two-year period applicable to all income tax refund claims and that the claim in this case is of that type.

Reversed.

MR. JUSTICE DOUGLAS dissents.